

**Internal Revenue Service
memorandum**

WTA-N-121191-97

EGBeck

date: JAN 15 1995

to: Assistant Commissioner (International)
Attn: Joy DeGrosky, Director of International Field
Assistant Specialization Program CP:IN:IFASP

from: Assistant Chief Counsel (International) CC:INTL

subject: Section 6038A(d) (1) Penalty - Correction of Prior Advice

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It has come to our attention that our office needs to correct prior advice that was provided to Examination. In light of the possibility that the issue may arise for similarly situated taxpayers, we are providing this technical assistance to you pursuant to Chief Counsel Notice N(30)000-273 Technical Advice, Field Service Advice (March 12, 1996) [see definition of Technical Assistance at I.C.].

The issue relates to taxpayers who are subject to the information reporting provisions of section 6038A of the Code for taxable years beginning before July 11, 1989. Our prior

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advice concluded that the initial monetary penalty under section 6038A(d)(1), which applies to failures to timely file Form 5472 (Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business) for taxable years beginning before July 11, 1989, is \$10,000 (instead of \$1,000) when the Form 5472 is first filed after November 5, 1990.

Upon further consideration, we have concluded that the \$1,000 monetary penalty under section 6038A(d)(1) continues to apply to failures to timely file a Form 5472 for taxable years beginning before July 11, 1989, when the due date (including extensions) for filing the Form 5472 is on or before November 5, 1990. If the due date (including extensions) of the Form 5472 for taxable years beginning before July 11, 1989, is after November 5, 1990, and the reporting corporation fails to timely file the Form 5472 on or before its due date, the \$10,000 (instead of \$1,000) monetary penalty under section 6038A(d)(1) applies. With respect to continued failures under section 6038A(d)(2) for the above taxable years, Treas. Reg. § 1.6038A-4(d)(4) applies. This regulation provides that, for a failure relating to a taxable year beginning before July 11, 1989, if the failure continues following 90 days after notice of failure is sent, a penalty of \$10,000 may be assessed for each 30-day period (or fraction thereof) beginning after November 5, 1990, during which the failure continues.

If you have any questions regarding the above, please contact Elizabeth G. Beck at 622-3880.